A.F.R.

24-07-2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.622/2000

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

PETITIONERS : 1. State of M.P., through the Secretary, Govt. of M.P., Water Resources Department, Vallabh Bhawan, Bhopal, (M.P.)
2. The Chief Engineer, Mahanadi Pariyojna, Water Resources Department, Raipur, (M.P.)
3. The Executive Engineer, Water Resources Division, Raipur, (M.P.)
4. The Sub Divisional Officer, Water Management Sub Division, No.4, Raipur, (M.P.)

VERSUS

RESPONDENTS : 1. Karamchand Agrawal, aged 40 years S/o Late Shri Lalkishan Chand Agrawal Sub Engineer, Water Resources Sub Division No.1, Raipur (M.P.) R/o Qtr.No.G-15, Irrigation Colony, Shanti Nagar, Raipur (M.P.)
: 2. M.P. State Administrative Tribunal, Bench at Raipur through its Registrar.

Present:-

Shri Vinay Harit, Deputy Advocate General for the Petitioners/State.

ORAL ORDER

(Passed on 24th July, 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

We are of the considered opinion that in the facts and circumstances of the case, there is absolutely no justification for the State

Govt. and its authorities to prefer this Writ Petition under Article 227 of Constitution of India against the order of M.P. Administrative Tribunal (for short "the Tribunal") dated 25-10-1999 made in O.A.No.1146/1998, which order, in our considered opinion, is just and equitable and does not warrant any interference.

2. The relevant facts, in brief, are as follows:

In the year 1996, the first respondent namely Karamchand Agrawal was holding the post of Sub Engineer in the Water Resources Department and he was residing in a rented house in Raipur city. It appears that the landlord wanted the said premises for his own use and occupation. He was pressurizing the first respondent to vacate the same. That led to the first respondent making a request to his immediate superiors to allot him a 'G' type govt. quarter in Raipur to which he was entitled. According to the first respondent, the immediate superiors informed the first respondent that there was some technical difficulty to pass allotment order immediately, but, he could occupy one of the many vacant 'G' type houses then available for occupation. Accordingly, the first respondent occupied one of the vacant 'G' type government quarters under information to his immediate superior officer, as could be seen from the Annexure P-2. The first respondent furthermore requested the concerned authorities to regularize his occupation of 'G' type government quarter by passing appropriate allotment order. It is also seen from the records that in pursuance of the above request of the first respondent, his superior officer recommended to the competent authority to allot a 'G' type government quarter. It is also a matter of record that the salary paying authority was deducting rent and water charges with regard to the 'G' type quarter occupied by the first respondent from his salary regularly. When

the matter stood thus, the Executive Engineer, Water Resources Department, Raipur issued an order on 19-05-1998 which reads as follows:-

> विषयांतर्गत प्रकरण में अनुविभागीय अधिकारी, जल प्रबंध संभाग कमांक–4 रायपुर, ने सूचित किये है कि आपने 3.11.1996 से अनाधिकृत रुप से आवास गृह कमांक जी–15 में कब्जा किये हुए है। इसलिए बाजार दर के हिसाब से प्रति माह किराया 1740/– रु. एवं 8/– रु. जल कर 8/– रु. मल कर कुल रुपये 1756/– के हिसाब से कटौती की जाए। 11/96 से 4/98 तक कुल 18 माह कुल 31,608/– की वसूली 40 किश्तों में प्रत्येक माह 790/– रु. तथा अंतिम किश्त 794/– रु. के हिसाब से वसूली की जावेगी। तथा माह मई 98 से 1756/– रु. प्रत्येक माह वेतन से कटौती की जावेगी । अतः सूचनार्थ

3. It appears that after issuance of Annexure A-6, the Executive Engineer, finding some errors in calculation, issued two corrigendums marked as Annexures A-7 & A-8 dated 08-06-1998 & 01-08-1998 respectively.

4. The first respondent feeling aggrieved by the Orders Annexure A-6, A-7 and A-8 instituted O.A.No.1146/1998 praying for quashing of those orders (Annexure A-6 to A-8). In support of his prayer, the petitioner had set out the facts to which reference has been made by us supra. The O.A. was contested by the Department by filing reply. The only contention raised in the reply, as defence, is that the first respondent unauthorisedly occupied the Govt. quarter without authority and without intimation to the department. The Tribunal without finding any merit in the defence and

opining that in the facts and circumstances, Fundamental Rules 45(b) has no application, allowed the Application and quashed the orders Annexure A-6 to A-8 with costs fixed at Rs.300/-. Hence, this Writ petition by the State Govt. and its authorities.

5. We have heard learned Dy. Advocate General for the State and its authorities. Although the first respondent was served with notice, he remains unrepresented. It was contended by the learned Dy. Advocate General that admittedly without there being any allotment order, the first respondent had occupied government quarter G-15, and therefore, he is liable to pay penal rent and in that view of the matter, no exception could be taken to the demand made in Annexure A-6 and Annexure A/7 and A/8.

6. Having heard learned Dy. Advocate General and perused the material papers appended to the writ petition, the only question that arises for decision is whether the action of the Executive Engineer, Water Resources, Division Raipur, the 3rd petitioner herein, seeking to recover penal rent from the first respondent at the rate of Rs.1788/- per month as penal rent is justified and legal.

7. In whatever area or domain the State and State Authorities operate or function, their action is liable to be reviewed on the touch-stone of Article 14 postulates i.e. reasonableness, fairness and non-arbitrariness. The basic facts of this case are not in dispute and they are straight-forward. The case of the first respondent is that in the month of September 1996, he made a request to official superiors to allot a 'G' type

Government quarter to him for his residence on the ground that his landlord was pressurizing him to vacate the rented house immediately on the ground that the same was required by him for his *bona fide* use and occupation. It is also not in dispute that the first respondent occupied one of the vacant G-15 Government quarters under intimation to the official superiors. It is also not in dispute that even after such occupation, the first respondent went on requesting the allotting authority repeatedly to regularize his occupation by issuing allotment order. Above all, the reason which weighed very much with us not to interfere with the order of the Tribunal is the fact that the salary paying authority was deducting the rent as well as water charges from the salary of the first respondent-Officer regularly. If that is the conduct of the State and State Authorities, it should not lie in the mouth of the third petitioner in the year 1998 to say that the first respondent was an unauthorized occupant of Government quarter. The facts of the case and equities wholeheartedly support the first respondent. Government quarters are meant to be allowed for serving officers and employees of the State. It is not that when the first respondent occupied the Government quarter, he was not serving under the State. The first respondent was badly in need of a Government quarter for use and occupation. In that view of the matter, the State was bound to allot a suitable quarter to him particularly because at that time the quarters were vacant and available for allotment in Raipur city. It is not that even in such circumstance, the first respondent highhandedly and without informing superiors entered the premises and occupied the same. He did it with the oral permission of the superior-officers. In the facts and circumstances of the case, we tend to believe the version of the first respondent/Officer, because, it stands to commonsense. In such fact-

situation if the State and State Authorities recover the penal rent, their action will be arbitrary and unreasonable and could not be sustained on the touch-stone of Article 14 postulates. There is absolutely no ground much less good and weighty ground for us to step in under Articles 226 and 227 of the Constitution and upset a just and equitable order made by the Tribunal.

8. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge